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No. 1038

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1946

POTOMAC ELECTRIC POWER COMPANY, *Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF IN OPPOSITION

JOHN O'DEA,
People's Counsel, D. C.,
225 District Building,
Washington 4, D. C.

DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion and order of the Public Utilities Commission (R. 1) are reported in 55 P. U. R. (N. S.) 65. The findings and order of the District Court of the United States for the District of Columbia (R. 261 and 262) are not reported.

The opinion of the United States Court of Appeals for the District of Columbia (R. 641) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (R. 657) was entered on July 16, 1946. Petition for rehearing was filed on December 14, 1946 (R. 658), and denied on December 17, 1946 (R. 669). The petition for writ of certiorari was filed in this Court on February 17, 1947. The jurisdiction of this Court is contained in Sec. 8, Par. 65, of the Act of March 4, 1913, 37 Stat. 989, ch. 150, as amended by Sec. 2 of the Act of August 27, 1935, 49 Stat. 882, ch. 742 (Section 43-705, D. C. Code, 1940 ed.), and in Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938, c. 229; U. S. Code, 1940 ed., Title 28, Section 347(a)).

STATUTE INVOLVED

The statute involved is set out in pertinent part in the appendix of the petition for writ of certiorari.

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. Although the Commission held a full hearing on proper notice, although Par. 62 of the statute (Sec. 43-702, D. C. Code, 1940 ed.) expressly authorizes the Commission to rescind or amend any rate order, and although Par. 62 of the statute specifically vests full authority in the Commission to change rates and regulations which have been embodied in a mutual agreement regarding a sliding scale, petitioner nevertheless contends that the order of the Commission is invalid because of the manner in which it was adopted.

No contention is made that the order is in violation of the due process clause of the Fifth Amendment. Petitioner does not

allege that the order of the Commission resulted in confiscation of its property and its position with respect to the method employed by the Commission in arriving at its order is therefore untenable.

The findings of fact of the Commission are not unreasonable, arbitrary or capricious; therefore, they are conclusive.

The petition constitutes nothing more than a request for another hearing.

ARGUMENT

I

The petition should be denied.

The statute involved is limited in its operation to the District of Columbia. This Court has stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 80 L. Ed. 229. Certiorari was granted in *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, 88 L. Ed. 883, 64 S. Ct. 731, "at the instance of the Director of Economic Stabilization and the Administrator, Office of Price Administration, of the United States" (p. 491).

The case does not involve a question of general importance or a question of substance relating to the construction or application of the Constitution, or a treaty of the United States, which has not been, but should be, settled by this Court. The petitioner does not question the constitutionality of the statute. The case does not involve a statute of the United States which should be settled by this Court although the statute involved was enacted by the Congress of the United States. All statutes in force and effect in the District of Columbia

are enacted by Congress in the exercise of that power expressly delegated to it by Article I, Section 8, Clause 17, of the Constitution. Subject only to those prohibitions of the Constitution which act directly or by implication upon the federal government, Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. When acting thus, Congress acts as a legislature of national character. *Cohens* v. *Virginia*, 19 U. S. 264, 6 Wheat, 264, 5 L. Ed. 257. However that may be, the statute is not national in its operation.

II

The rate established by the Commission is not confiscatory but is just, reasonable and nondiscriminatory.

The Court of Appeals points out that—

> "It is scarcely necessary to say that the impact of this order upon the Company produces no arbitrary result. The Company does not even question the finding of the District Court that the rates required by the order are just and reasonable." (R. 645)

This Court has said:

> "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. * * * It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. * * * And he who would upset the rate order under the Act carries the heavy burden of mak-

ing a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, 602, 64 S. Ct. 281, 88 L. Ed. 333.

III

The Court of Appeals for the District of Columbia has given proper effect to an applicable decision of this Court.

This Court granted certiorari in *Vinson* v. *Washington Gas Light Co., supra,* to review a rate order of the Public Utilities Commission of the District of Columbia. The Court said:

> "If we consider the petitioners' present position we find that the Commission heard all evidence offered, and says it weighed it. * * * In short, if the inquiry was limited to the issues comprehended in the Commission's order of investigation, the petitioners were afforded every opportunity for a full hearing." (P. 500)

In the case at bar the Court of Appeals gave proper effect to that decision. The order in controversy did not abandon the sliding scale but only modified it after a full hearing, notice of which provided that the Commission had ordered an investigation to be made to determine:

1. Whether the sliding-scale method of electric rate regulation shall be abandoned.
2. Whether the sliding-scale method of electric rate regulation shall be continued in its present form or with modifications of the basic elements of the existing arrangement.
3. Without limiting the scope of the investigation, what modifications, if any, shall be made in the following basic elements of the present sliding-scale arrangement:

(a) The rate base.
(b) Rate of return.
(c) Depreciation accruals.
(d) Method of effecting rate reductions. (R. 1)

That the court below fully considered these criteria in the case at bar seems clear from the following statement from the concurring opinion of Mr. Justice Clark:

"* * * First, a valuation was made under the consent decree of 1924. Presumably, since no objection was raised, that valuation was considered to be proper at that time. There is nothing in the Act which would, in my opinion, preclude the carrying forward of that valuation, under an accounting pattern providing for accessions; and there is nothing in the Act to direct the Commission to make a new 'valuation' whenever an amendatory regulation was promulgated under the 'sliding-scale' plan. Quite apart from this consideration, we have the question of the nature and purpose of the hearing which resulted in Order No. 2796. It was not only broad enough to cover a valuation proceeding, but the Commission did in fact take valuation evidence into account. Both the Commission and the United States presented valuation data, and the Company cannot be heard to say that it did not know that it too could come forward with such evidence as it deemed pertinent in this regard. If it was not satisfied with the evidence presented to the Commission it had the burden of making out its own case. This the Company failed to do, and in my opinion the Commission was properly within the requirements of the law in making such adjustments as it did and establishing the so-called 'new' valuation on the basis of the best evidence before it on the date stated, December 31, 1943."

IV

Since the findings of fact of the Commission are not unreasonable, arbitrary or capricious, they are conclusive.

Par. 66 of the statute (Sec. 43-706, D. C. Code, 1940 ed.; Petition appendix, page 5) provides that:

> "In the determination of any appeal from an order or decision of the commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the commission shall be conclusive unless it shall appear that such findings of the commission are unreasonable, arbitrary or capricious."

In its essentials, the order complained of constitutes the finding of an ultimate fact. It is submitted that the order has warrant in the record and a reasonable basis in the law. *Cf. Dobson* v. *Commissioner*, 320 U. S. 489, 88 L. Ed. 248, 64 S. Ct. 239.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN O'DEA,
People's Counsel, D. C.,
225 District Building,
Washington 4, D. C.